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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 CRIMINAL PRODUCTIONS, INC.,

8 Plaintiff(s),

9 v.

10 GABRIELLA SALDIVAR,

11 Defendant(s).

Case No. 2:16-CV-2691 JCM (GWF)

ORDER

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13 Presently before the court is plaintiff Criminal Productions, Inc.'s motion for default
14 judgment against defendant Gabriela Saldivar. (ECF No. 18).

15 **I. Facts**

16 Plaintiff produced the motion picture "Criminal." (ECF No. 1). Upon discovering that the
17 motion picture had been unlawfully disseminated over BitTorrent networks and shared amongst
18 numerous users, plaintiff took steps to protect its intellectual property. *Id.* Plaintiff engaged the
19 services of a forensic investigator, MaverickEye, to identify the most serious infringers. *Id.*
20 Plaintiff separated these infringers into small groups of ten to thirty people who shared the same
21 digital file over the same peer-to-peer file sharing network. *Id.* Prior to filing suit, plaintiff
22 consulted an independent third-party consultant to verify the accuracy of the information. *Id.*

23 Plaintiff filed the present case against sixteen Doe defendants, originally identified by their
24 IP addresses. *Id.* After conducting discovery to obtain names and contact information for the IP
25 addresses, plaintiff sent demand letters to the identified defendants. *Id.* On March 2, 2017,
26 plaintiff amended its complaint to personally name the identified defendants. (ECF No. 7).
27 Defendant Saldivar was served on May 1, 2017. (ECF No. 10). Saldivar has not appeared in this
28 action.

1 **II. Legal Standard**

2 Obtaining a default judgment is a two-step process. *Eitel v. McCool*, 782 F.2d 1470, 1471
3 (9th Cir. 1986). First, “[w]hen a party against whom a judgment for affirmative relief is sought
4 has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the
5 clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure
6 55(b)(2) provides that “a court may enter a default judgment after the party seeking default applies
7 to the clerk of the court as required by subsection (a) of this rule.”

8 The choice whether to enter a default judgment lies within the discretion of the court.
9 *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant
10 a default judgment, the court should consider the seven factors set forth in *Eitel*: (1) the possibility
11 of prejudice to plaintiff if default judgment is not entered; (2) the merits of the claims; (3) the
12 sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a dispute
13 concerning material facts; (6) whether default was due to excusable neglect; and (7) the policy
14 favoring a decision on the merits. 782 F.2d at 1471–72. In applying the *Eitel* factors, “the factual
15 allegations of the complaint, except those relating to the amount of damages, will be taken as true.”
16 *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *see also* Fed. R. Civ. P. 8(d).

17 **III. Discussion**

18 Plaintiff requests the court enter default judgment against defendant as follows: \$15,000 in
19 statutory damages; a permanent injunction against defendant; and attorney’s fees and costs in the
20 amount of \$3,367.50. (ECF No. 18).

21 On June 23, 2017, plaintiff filed a motion for entry of clerk’s default as to defendant
22 Saldivar (ECF No. 14), and on June 26, 2017, the clerk entered default, (ECF No. 15). Therefore,
23 plaintiff has satisfied subsection (a) of Federal Rule of Civil Procedure 55.

24 The first *Eitel* factor weighs in favor of default judgment in this case. Defendant has failed
25 to respond or appear in the case, which prejudices plaintiff’s ability to pursue its claims on the
26 merits and seek recovery of damages. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
27 1177 (C.D. Cal 2002) (“Potential prejudice to Plaintiffs favors granting a default judgment. If
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1 Plaintiffs' motion for default judgment is not granted, Plaintiffs will likely be without other
2 recourse for recovery.”).

3 The second and third *Eitel* factors favor plaintiff in this case. Plaintiff's complaint
4 adequately alleges plaintiff's copyright infringement claims. *See Eitel*, 782 F.2d at 1471.

5 The fourth *Eitel* factor, which compares the amount of money at stake to the seriousness
6 of defendant's conduct, supports a default judgment in favor of plaintiff. “If the sum of money at
7 issue is reasonably proportionate to the harm caused by the defendant's actions, then default
8 judgment is warranted.” *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 921
9 (N.D. Cal. 2010).

10 For statutory damages, plaintiff requests \$15,000 under 17 U.S.C. § 504(c). The statute
11 sets a \$750 minimum and \$30,000 maximum award for damages in copyright infringement cases.
12 17 U.S.C. § 504(c)(1). The maximum increases to \$150,000 when the infringement was willful.
13 17 U.S.C. § 504(c)(2). Courts have “wide discretion in determining the amount of statutory
14 damages to be awarded, constrained only by the specified maxima and minima.” *Peer Int'l Corp.*
15 *v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *Harris v. Emus Records*
16 *Corp.*, 738 F.2d 1329, 1335 (9th Cir. 1984)).

17 Given defendant's numerous opportunities to respond to plaintiff's demand letters or
18 otherwise appear in the action, coupled with plaintiff's unopposed allegations that the court takes
19 as true, the court holds defendant willfully infringed on plaintiff's copyright. However, similarly
20 to another court in this district,¹ the court holds that an award of \$15,000 would severely
21 overcompensate plaintiff and unduly punish defendant for the conduct at issue here. The court
22 will exercise its discretion and award statutory damages in the amount of \$1,500. *See Peer*, 909
23 F.2d at 1336. This award will adequately protect plaintiff's copyrights without constituting
24 excessive punishment. *See LHF Productions, Inc. v. Buenafe*, no. 2:16-cv-01804-JAD-NJK, 2017
25 WL 4797523, at *4 (D. Nev. Oct. 24, 2017).

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28 ¹ In *LHF Productions, Inc. v. Buenafe*, no. 2:16-cv-01804-JAD-NJK, 2017 WL 4797523
(D. Nev. Oct. 24, 2017), Judge Dorsey awarded plaintiff \$1,500 in statutory damages on a legally
identical fact pattern.

1 The Copyright Act allows courts to award the recovery of full costs and reasonable
2 attorney's fees to the prevailing party. 17 U.S.C. § 505. Plaintiff moves for \$2,887.50² in
3 attorney's fees and \$480 in costs, for a total of \$3,367.50.

4 Therefore, the total sum of money at stake is \$4,867.50. Thus, the fourth factor favors an
5 entry of default judgment. *See Eitel*, 782 F.2d at 1471.

6 The fifth *Eitel* factor, the possibility of a dispute concerning material facts, favors plaintiff.
7 Here, there is no dispute concerning the material facts of the case. Plaintiff has adequately pleaded
8 copyright infringement claims. Further, "[o]nce the clerk enters a default, the well-pleaded factual
9 allegations of the complaint are taken as true, except for those allegations relating to damages."
10 *O'Brien v. United States of America*, no 2:07-cv-00986-GMN-GWF, 2010 WL 3636171, at *1 (D.
11 Nev. Sept. 9, 2010). Therefore, the court must accept all well-pleaded factual allegations in
12 plaintiff's complaint as true. Considering the well-pleaded factual allegations, there are no
13 disputes of material fact regarding defendant's infringing conduct. Accordingly, the fifth *Eitel*
14 factor favors plaintiff. *See Eitel*, 782 F.2d at 1471–72.

15 The sixth *Eitel* factor considers excusable neglect. 782 F.2d at 1472. The factor favors
16 entry of default judgment when the defendant has been properly served or plaintiff shows that
17 defendant is aware of the lawsuit and failed to answer. *Meadows v. Dominican Republic*, 817 F.2d
18 517, 521 (9th Cir. 1987). Here, plaintiff properly served defendant, who has failed to answer or
19 otherwise appear. Accordingly, the court holds that plaintiff has demonstrated defendant's failure
20 to appear is not the result of excusable neglect. *See id.* The sixth *Eitel* factor favors default
21 judgment in this case. *See Eitel*, 782 F.2d at 1472.

22 The seventh *Eitel* factor considers the strong policy favoring case disposition on the merits.
23 *Id.* While public policy generally favors disposition on the merits, default judgment is proper
24 when a defendant deliberately chooses not to defend the case. *PepsiCo, Inc.*, 238 F. Supp. 2d at
25 1177. Defendant's conduct in this case has made it impractical, if not impossible, to adjudicate
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28 ² Plaintiff used a lodestar calculation of \$375 an hour multiplied by 7.7 hours reasonably
spent litigating this case.

1 this case on the merits. Accordingly, default judgment is appropriate. *See Eitel*, 782 F.2d at 1472;
2 *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177.

3 After considering the foregoing, the court finds good cause to grant plaintiff's motion for
4 default judgment. Moreover, plaintiff has properly complied with Rule 55. Therefore, the court
5 will grant plaintiff's motion for default judgment.

6 Plaintiff requests a permanent injunction against defendant "enjoining her from directly or
7 indirectly infringing Plaintiff's rights as to the Plaintiff's motion picture, including without
8 limitation using the Internet to reproduce, to distribute, to copy, or to publish the motion picture."
9 (ECF No. 18 at 12).

10 The Copyright Act allows courts to "grant temporary and final injunctions on such terms
11 as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a).
12 The Supreme Court held in *eBay Inc. v. MercExchange, L.L.C.* that a plaintiff must satisfy a four-
13 factor test to receive a permanent injunction in a patent-infringement case. 547 U.S. 388, 391
14 (2006). Plaintiff must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies
15 available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that,
16 considering the balance of hardships between the plaintiff and defendant, a remedy in equity is
17 warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Id.*
18 This test also applies to copyright-infringement cases. *Flexible Lifeline Systems, Inc. v. Precision*
19 *Lift, Inc.*, 654 F.3d 989, 995–96 (9th Cir. 2011).

20 Plaintiff argues that "[m]onetary damages alone are simply inadequate" because "absent
21 injunctive relief to force the deletion of each torrent file from the Defendant's computers ...
22 infringement will continue unabated in exponential fashion." (ECF No. 18 at 11). The court holds
23 that the monetary judgment in this case is sufficient to compensate plaintiff for any infringement
24 injury and likely to sufficiently deter defendant from infringing plaintiff's copyright, so plaintiff
25 fails to satisfy the second factor of the permanent-injunction test. *See MercExchange*, 547 U.S. at
26 391. Accordingly, the court will deny plaintiff's request for injunctive relief.

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